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IN THE
Supreme Court of the United States

OCTOBER TERM, 1941 ✓

No. ~~1004~~ and ~~1005~~ 51-53

IN THE MATTER OF
CHICAGO, MILWAUKEE, ST. PAUL AND PACIFIC
RAILROAD COMPANY

GUARANTY TRUST COMPANY OF NEW YORK, ETC., AS
FIFTY YEAR MORTGAGE TRUSTEES

See Debtor
Petitioners

GROUP OF INSTITUTIONAL INVESTORS, ETC., *et al.*

Respondents

E. STANLEY GLINES, ETC., AS
FIFTY YEAR MORTGAGE PROTECTIVE COMMITTEE

Petitioners

v.

GROUP OF INSTITUTIONAL INVESTORS, ETC., *et al.*

Respondents

**PETITION FOR WRITS OF CERTIORARI TO
THE UNITED STATES CIRCUIT COURT OF
APPEALS FOR THE SEVENTH CIRCUIT**

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Dated March 21, 1942



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In the Matter of
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RAILROAD COMPANY

Debtor

GUARANTY TRUST COMPANY OF NEW YORK,
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Nos.

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**PETITION FOR WRITS OF CERTIORARI TO
THE UNITED STATES CIRCUIT COURT OF
APPEALS FOR THE SEVENTH CIRCUIT**

*To the Honorable the Chief Justice of the United States and
the Associate Justices of the Supreme Court of the
United States:*

Your petitioners are:

(1) Guaranty Trust Company of New York and Merrel P. Callaway (herein sometimes called the "Fifty Year Mortgage Trustees") as trustees under the Mortgage and Deed of Trust of Chicago, Milwaukee, St. Paul and Pacific Railroad Company dated as of February 2, 1925 (herein sometimes called the "Fifty Year Mortgage"), securing the Chicago, Milwaukee, St. Paul and Pacific Railroad Company Fifty Year Five Per Cent. Mortgage Gold Bonds, Series A, due February 1, 1975 (herein sometimes called the "5s of 75"); and

(2) E. Stanley Glines, Morton H. Fry, R. Harland Shaw, Charles M. Storey, and C. Oliver Wellington as a Protective Committee for holders of the 5s of 75 (herein sometimes called the "Fifty Year Mortgage Protective Committee").

For the convenience of this Court petitioners have collaborated in preparing this petition; but they are filing it severally, and in the event writs of certiorari are granted they intend to file separate briefs on the merits and to participate separately in oral argument.

Petitioners respectfully pray that a writ of certiorari be issued to review the judgments of the United States Circuit Court of Appeals for the Seventh Circuit entered December 4, 1941 in these reorganization proceedings, reversing the order of the District Court of the United States for the Northern District of Illinois, Eastern Division, which had approved the Modified Plan of Reorganization approved by the Interstate Commerce Commission and certified to the District Court, and directing the District Court to remand the proceedings to the Commission for the mak-

ing of findings, and, if necessary, the taking of additional evidence for the making of findings, as indicated in the opinion of the Circuit Court.

Reports, Orders and Opinions Below

The initial report (R. 2153-2269) and order (R. 1258-83) of the Commission decided February 12, 1940 are reported in 239 I. C. C. 485, and its supplemental report (R. 1284-1317) and supplemental order (R. 1319-47) decided June 4, 1940 are reported in 240 I. C. C. 257. The Plan of reorganization certified by the Commission to the District Court is embodied in this supplemental order, and is herein sometimes called the "Commission's Plan". The opinion of the District Court dated October 21, 1940 (R. 1857-99) is reported in 36 F. Supp. 193; its findings of fact, conclusions of law, order and decree entered November 13, 1940 appear at R. 1978-92. The opinion of the Circuit Court dated December 4, 1941 (R. 2297-2317) is reported in 124 F. (2d) 754; its judgments entered the same day appear at R. 2318-24. Its memorandum opinion dated January 12, 1942 and order entered the same day, denying a motion to modify its original opinion, appear at R. 2334-5; this memorandum opinion is not yet reported.

Jurisdiction

The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925 (28 U. S. C. A. § 347(a)) and Section 24(c) of the Bankruptcy Act as amended (11 U. S. C. A. § 47(c)). The judgments of the Circuit Court were entered December 4, 1941 (R. 2318-24).

Statute Involved

The issues involve the construction and application to the facts of this case of Section 77 of the Bankruptcy Act as amended (11 U. S. C. A. § 205). Relevant portions thereof are printed as an Appendix (pp. 57-63) to the petition for writs of certiorari dated January 17, 1942 and filed with this Court by the Group of Institutional Investors (herein sometimes called the "Group") and the Mutual Savings Bank Group (herein together sometimes called the "Groups") in Causes Nos. 875-883, present Term, wherein review of these same judgments is sought. In the interests of economy that material is not reprinted here.

Summary Statement of the Matter Involved

The nature of these proceedings is summarized as to the facts in the aforementioned January 17, 1942 petition of the Groups for writs of certiorari (pp. 3-7), and to save the time of this Court is not repeated here.* Petitioners do not, however, subscribe to the implication arising from the Groups' phraseology that either the record or the consideration thus far given to the problems inherent in these proceedings is sufficient for the formulation of a fair and equitable plan of reorganization.

As regards the primary issues involved, furthermore, the position of petitioners differs in marked respect from

*It is respectfully requested that the certified transcript of record and additional printed copies that were filed with the petition of the Groups be deemed to accompany this petition within the meaning of Rule 38 of the Revised Rules of Procedure of the Supreme Court of the United States, and that reference may be made thereto accordingly.

that taken by the Groups. Petitioners were appellants before the Circuit Court; the Groups were appellees. From a procedural standpoint, therefore, petitioners obtained the relief requested of the Circuit Court by them. But the more important issues raised by petitioners were left undecided. These issues are fundamental, and an authoritative determination thereof is essential to the formulation of a fair and equitable plan of reorganization of the Debtor.

In order to expedite the progress of these reorganization proceedings, petitioners do not object to the granting of the writs requested by the Groups. Indeed, the fourth question presented in the petition of the Groups (p. 12), namely, as to whether the order of approval of the District Court should be affirmed, seems of necessity to require a determination of the questions hereinafter presented and on which the Circuit Court failed to express any views. In an effort to be specific, however, and to bring these issues squarely to the fore, this petition is being filed.

There have been duly issued under the Fifty Year Mortgage and are now outstanding \$106,395,096 principal amount of 5s of 75. No interest has been paid thereon during these reorganization proceedings, and the total claim of the holders of 5s of 75 now exceeds \$143,000,000. The 5s of 75 rank immediately junior to the \$8,665,000 principal amount of bonds issued under the First and Refunding Mortgage of Chicago, Milwaukee, St. Paul and Pacific Railroad Company dated as of February 2, 1925, all of which are pledged as partial security for Reconstruction Finance Corporation loans now amounting to less than \$10,800,000. Interest on these loans has been paid currently during these reorganization proceedings. The First and Refunding Bonds are amply secured by various bonds and stocks pledged under the First and Refunding Mort-

gage. Accordingly the 5s of 75 are secured by what is for all practical purposes a first lien on the Lines West, extending from Mobridge, South Dakota, to the Pacific Coast and comprising over 2,800 miles (I. C. C. Ex. 91), and by a second lien on the Lines East, comprising roughly the two-thirds of the main-line mileage east of the Missouri River. There are also other substantial items of underlying security.

The Fifty Year Mortgage Trustees have participated in these reorganization proceedings throughout their course; the Fifty Year Mortgage Protective Committee, formed as the result of a meeting of holders of 5s of 75 called in February of 1938 by the Fifty Year Mortgage Trustees, is the only committee representing the 5s of 75 exclusively or primarily.

The questions at issue far transcend in importance matters of difference as to the allocation of securities and the details of reorganization. Because of the importance of the subject, explicit directions to the subordinate courts and to the Interstate Commerce Commission are essential to the orderly maintenance of the transportation of the United States. This writ is asked in order to secure such a consideration from the final authority in the interpretation of Section 77 of the Bankruptcy Act.

Questions Presented

1. Can liens be destroyed and junior securities allotted to first lienors in the reorganization of a major railroad without the making of thorough and comprehensive studies of the worth of the mortgage districts involved?
2. Can holders of bonds secured by a first lien on approximately one-third of the mileage and one-third of

the depreciated reproduction value of an entire railroad system be forced to take the bulk of their claim in new stock merely on the basis of results shown by a perfunctory segregation of revenues and expenses admittedly made for the purposes of a moratorium or "stand-by" plan only?

3. Does the public interest, or any other factor, require that large amounts of first-lien, fixed-interest debt be converted into stock rather than into contingent-interest securities?

4. In determining whether the new securities to be issued to holders of existing securities pursuant to a plan of reorganization constitute full and adequate compensation for the rights surrendered, is it not necessary to make a realistic appraisal of the worth of such new securities?

5. In a proposed capital structure that does not permit satisfaction in full of the claims of senior creditors on the basis of any realistic appraisal of the worth of the new securities offered in exchange, are junior creditors permitted to share in such new securities?

6. Is the treatment proposed for the holders of 5s of 75 in the Commission's Plan fair and equitable and in conformity with the requirements of the law of the land?

7. Should not the Commission, in the event these proceedings are remanded to it for further proceedings in accordance with Section 77 of the Bankruptcy Act as amended, be required to bring the record up to date?

Reasons Relied on for Allowance of the Writ

The issues in these proceedings present important questions of federal law that have not, and should be, passed

upon by this Court. An authoritative determination thereof is essential to the formulation of any fair and equitable plan of reorganization of the Debtor, and accordingly the proper construction and application of Section 77 of the Bankruptcy Act as amended should be given at this time in order to expedite the consummation of this reorganization and to prevent unnecessary delay in the future course of these already lengthy proceedings. The almost unique course of the instant proceedings, especially when taken in conjunction with the dicta in the opinion of the Circuit Court made in spite of its expressed inability to determine the fairness of the Commission's Plan, is at variance with the procedure and criteria observed in other proceedings of this sort.

The issues go far deeper than the mere question of making formal findings, however. Before any valid findings can be made at all, there must be proper evidence upon which to base them. Regardless of the form in which findings are presented, the basing of allocations, or of findings leading thereto, on assumption and inadequate data makes illusory the protection of investors apparently afforded by Section 77. Approval of the Commission's Plan on the basis of the record in these proceedings would strongly indicate that the careful and comprehensive studies made in other comparable proceedings for the reorganization of railroads were in a large degree unnecessary, and accordingly such approval would have an exceedingly harmful effect on the thoroughness with which the basic evidence is presented in various pending and future proceedings of this sort.

Furthermore, it seems obvious that no determination of fair compensation for rights taken away can be made

without a realistic and reasonably accurate appraisal of the worth of the new securities offered in exchange. The propriety of arbitrary and unnecessary conversion of first-lien bonds into stock on a large scale should be given authoritative consideration; if not only the lien but also the possibility of receiving income admittedly earned can be removed by this simple expedient, then the entire nature of bond investment becomes subject to totally new conceptions.

As regards the matter of bringing the record up to date in the event of further proceedings before the Commission, it is assumed that the Commission would do this in the normal course of events. It is submitted, nevertheless, that the preparation of an up-to-date record should be required as a matter of law, especially in a situation such as this, in which the relevant data of today are so vastly different from those on which the Commission's Plan is based.

The Fifty Year Mortgage Trustees and the Fifty Year Mortgage Protective Committee agree that these proceedings should be remanded to the Commission, but they urge that the basic issues presented therein be resolved, so that some guide will be available in attempting to formulate a fair and equitable plan of reorganization before the Commission. Failure to do so at this time may well expand these proceedings to an inordinate length. They also urge that, in so far as the docket of this Court permits, these proceedings be advanced on the docket in order to effect as speedy a determination of the matter by this Court as is consonant with orderly procedure.

Wherefore petitioners pray that writs of certiorari be issued to the United States Circuit Court of Appeals for the Seventh Circuit in order to permit review by this

Court of the judgments of the Circuit Court in the causes numbered 7613 and 7617 on its docket and respectively entitled "In the Matter of Chicago, Milwaukee, St. Paul & Pacific R.R. Co., Debtor, Guaranty Trust Company of New York, et al., etc., Appellants, *v.* Group of Institutional Investors, etc., et al., Appellees", and "In the Matter of Chicago, Milwaukee, St. Paul & Pacific R.R. Co., Debtor, E. Stanley Glines, et al., etc., Appellants, *v.* Group of Institutional Investors, etc., et al., Appellees"; that the judgments of the Circuit Court be so modified that these proceedings will be remanded to the Commission with specific instructions as to the aforementioned questions; and that petitioners may have such other and further relief in the premises as this Court may deem proper.

Respectfully submitted,

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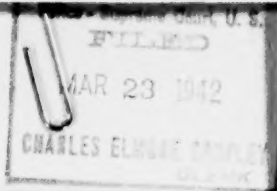
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Dated March 21, 1942

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1941. ✓

No. 107054

H. C. ORTON, ET AL.,

Petitioners,

vs.

GROUP OF INSTITUTIONAL INVESTORS, ET AL.,

Respondents.

PETITION OF H. C. ORTON, ET AL., FOR A WRIT OF CERTIORARI
TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR
THE SEVENTH CIRCUIT, AND BRIEF IN SUPPORT THEREOF.

EDWARD R. JOHNSTON,

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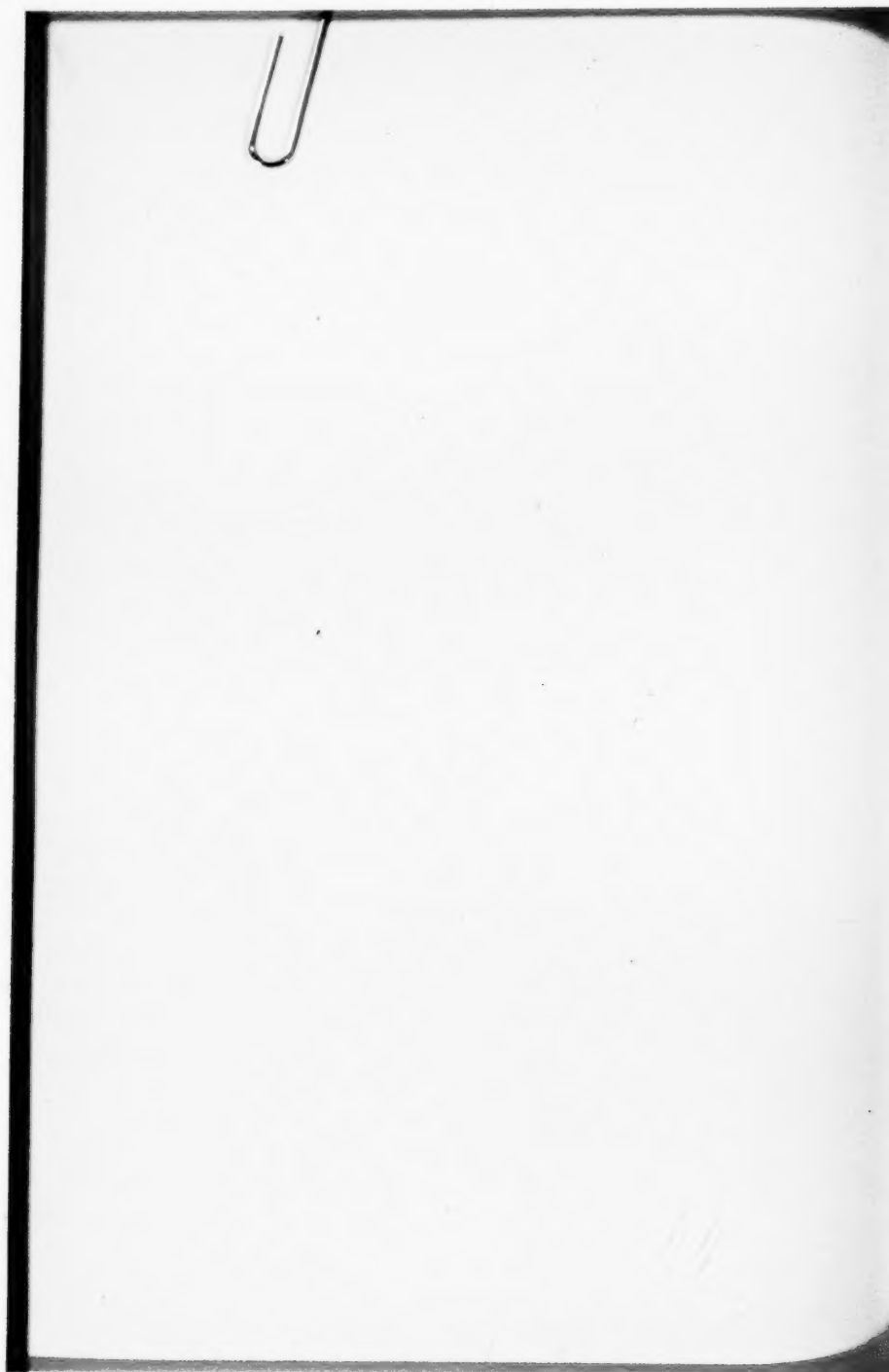
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March 23, 1942.



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IN THE
Supreme Court of the United States

OCTOBER TERM, 1941.

No.

H. C. ORTON, ET AL.,

Petitioners,

vs.

GROUP OF INSTITUTIONAL INVESTORS, ET AL.,
Respondents.

**PETITION OF H. C. ORTON, ET AL., FOR A WRIT OF
CERTIORARI TO THE UNITED STATES CIRCUIT
COURT OF APPEALS FOR THE SEVENTH CIRCUIT,
AND BRIEF IN SUPPORT THEREOF.**

*To the Honorable the Chief Justice and the Associate
Justices of the Supreme Court of the United States:*

Your petitioners, H. C. Orton, Karl A. Meyer, Rucker
Penn, J. B. Johnston, and D. C. Wolf, as the Protective
Committee for the holders of preferred stock of Chicago,
Milwaukee, St. Paul and Pacific Railroad Company, Debtor,
respectfully pray the issuance of a writ of certiorari to
review the judgment of the United States Circuit Court
of Appeals for the Seventh Circuit, entered on December
4, 1941, reversing the order of the District Court for the
Northern District of Illinois, which had approved the plan
of reorganization, and remanding the proceedings to the

said District Court with directions to set aside the District Court's approval and to remand the case to the Interstate Commerce Commission for the making of findings.

Summary Statement of the Matter Involved.

The Debtor, Chicago, Milwaukee, St. Paul and Pacific Railroad Company, filed its petition for reorganization under Section 77 of the Bankruptcy Act (11 U. S. C. A. 205) on June 29, 1935, with the District Court of the United States for the Northern District of Illinois (R. 2) and the petition was approved as properly filed by that Court on that same day (R. 42). Subsequently, the Interstate Commerce Commission approved and certified to the District Court a plan of reorganization on which hearings were held before the said District Court and an order entered approving the plan and overruling objections thereto, including the objections of the Preferred Stockholders Committee filed July 31, 1940 (R. 1397-1400). The order overruling the objections and the findings of fact, conclusions of law, and order and decree approving the plan were entered by the District Court on November 13, 1940 (R. 1977-1992). The Preferred Stockholders Committee appealed to the Circuit Court of Appeals (R. 2007). The said Circuit Court of Appeals on December 4, 1941, filed an opinion (R. 2297-2317) reversing the District Court and in the judgment upon such opinion the Court remanded the proceedings to the District Court with directions to set aside the District Court's order of approval and "to remand the case to the Interstate Commerce Commission for the making of findings, and, if necessary, the taking of additional evidence, that additional findings may be made, as indicated in the opinion of this Court filed herein" (R. 2320). Subsequently on December 18, 1941, your petitioners filed in the Circuit Court of Appeals a petition for modification of the opinion, seeking a striking

therefrom of three paragraphs which directly related to and affected the preferred and common stockholders of the Debtor. The Circuit Court of Appeals denied said petition on January 12, 1942, and issued a *per curiam* opinion to clarify its position (R. 2334-5).

While the actual reversal of the District Court and the remanding of the proceedings to the Interstate Commerce Commission constitute a judgment favorable to petitioners, inasmuch as the making of findings and the taking of additional evidence by the Commission is required to be predicated upon the language of the opinion of the Court, much of which language is adverse to these petitioners, we believe it necessary to file this petition in order to correct the errors found in such opinion.

Jurisdictional Statement.

The jurisdiction of this Court is invoked under the provisions of Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925 (28 U. S. C. A., Section 347(a)). The judgment of the Circuit Court of Appeals sought to be reviewed was entered on December 4, 1941, and the supplementary *per curiam* opinion was filed January 12, 1942.

Questions Presented.

- (1) Should the District Court have sustained the Preferred Stockholders Committee's objections to the plan of reorganization, which objections will be summarized in the brief in support of this petition?
- (2) Does the plan of reorganization as approved take the property of the preferred stockholders of the Debtor without due process of law in violation of the Fifth Amendment to the Constitution of the United States?

(3) Does the plan of reorganization as approved take the property of the preferred stockholders for public use without just compensation, in violation of the Fifth Amendment to the Constitution of the United States?

(4) Does the evidence of record support the findings of the Interstate Commerce Commission, approved by the District Court and, by the language in its opinion, approved by the Circuit Court of Appeals, that the equity of the holders of the Debtor's preferred and common stock has no value?

(5) Has the Interstate Commerce Commission made sufficient finding of value of the properties of the Debtor in order to justify elimination of the preferred stockholders from participation in the plan of reorganization?

Reasons Relied on for the Allowance of the Writ.

(1) The decision in the instant case insofar as it affects the preferred stockholders and limits the matters upon which the Interstate Commerce Commission is to pass upon remanding of the proceedings thereto, directly conflicts with the holding of the Circuit Court of Appeals for the Ninth Circuit in the case of *In re The Western Pacific Railroad Company, Debtor*, 124 F. (2d) 136, handed down November 28, 1941, wherein it was held that the decree of the District Court approving the plan of reorganization must be reversed and remanded with directions to dismiss or, on motion of any party in interest, to refer the proceeding back to the Commission without restriction, in which case the Court held that without requisite valuation data, it could not exercise the "informed, independent judgment" which any appraisal of the fairness of a plan of reorganization from any aspect entailed.

(2) The holding by the Circuit Court of Appeals that

the findings of the Interstate Commerce Commission as to absence of value of the old common and preferred stock was specific, definite, and certain, and fully met the requirements for determination and certification of values, is squarely in conflict with the last paragraph of Section 77 (e) and with the decision of the Court in *Consolidated Rock Products Company v. DuBois*, 312 U. S. 510.

(3) The question of the correctness of complete elimination from participation in a plan of reorganization of Section 77 of the stockholders of the old company is of extreme importance and has not yet been passed upon by this Court. Whether or not such elimination is legally and equitably justified in view of all the facts and circumstances in this case, should be definitely determined by this Court, and the thousands of stockholders in railroad corporations throughout the country are entitled to an enunciation of the correct principles so that these questions may be settled once and for all.

WHEREFORE, your petitioners respectfully pray that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the Circuit Court of Appeals for the Seventh Circuit, commanding that Court to certify and to send to this Court for its review on a day certain to be therein named, a full and complete transcript of the record and all of the proceedings in the case numbered on its docket, No. 7612, and entitled *In the Matter of Chicago, Milwaukee, St. Paul and Pacific Railroad Company, Debtor, H. C. Orton, et al., etc., Appellants v. Group of Institutional Investors, etc., et al., Appellees*, and that the judgment of the Circuit Court of Appeals for the Seventh Circuit may be modified by the omission therefrom of all restrictions upon the matters to be considered by the Interstate Commerce Commission, and that the decree of the District Court be reversed, the proceedings to be referred back to the Interstate Commerce Commission

for complete reconsideration under the provisions of subsection (d) of Section 77, as is provided in Section 77 (e), and for further action in conformity with the decision and determination of this Court; and that your petitioners may have such other and further relief in the premises as to this Court may seem proper.

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